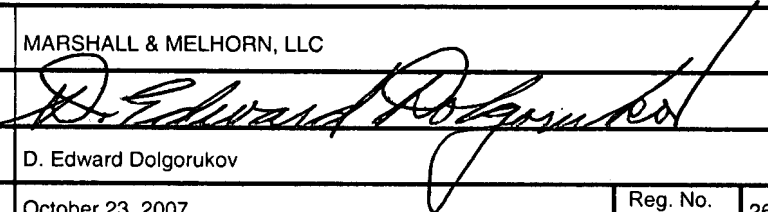


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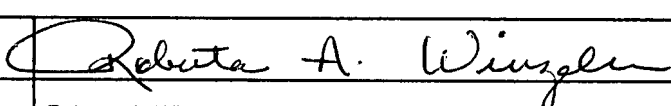
OIP TRANSMITTAL FORM OCT 25 2007 (to be used for correspondence after initial filing) U.S. PATENT & TRADEMARK OFFICE	Application Number	09/314,052	
	Filing Date	May 18, 1999	
	First Named Inventor	Douglas E. Ott	
	Art Unit	3763	
	Examiner Name	Manuel A. Mendez	
Number of Pages in This Submission		Attorney Docket Number	1-15372

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Postcard
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	MARSHALL & MELHORN, LLC		
Signature			
Printed name	D. Edward Dolgorukov		
Date	October 23, 2007	Reg. No.	26,266

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(Name)

Roberta A. Winzeler

(Signature)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:]	Examiner:	Manuel A. Mendez
Douglas E. Ott, et al.]		
]	Group Art Unit:	3763
Serial No.: 09/314,052]		
Filing Date: May 18, 1999]	Attorney Docket No. 1-15372	
]		
Title: METHOD AND APPARATUS]		
FOR CONDITIONING GAS]		
FOR MEDICAL PROCEDURES]		

MAIL STOP AMENDMENT
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AMENDMENT

WITH

FOR INTERFERENCE WITH PATENT

PURSUANT TO 37 C.F.R. §41.202

Honorable Sir:

Applicant, in response to the Office action of August 24, 2007, and the Examiner's request, respectfully submits this Request for Interference with Patent

Pursuant to 37 C.F.R. §41.202 and in furtherance of Applicant's Amendment filed February 9, 2005 copying claims from, and requesting an interference with, U.S. Patent Application No. 09/896,821 (now U.S. Patent No. 6,976,489, hereinafter collectively, the "'489 Patent"). Claims 83, 84, and 87 of the present application were copied from the '489 Patent. Claim 86 was substantially copied from the '489 Patent. In an Office Action mailed August 24, 2007 (the "Office Action"), all claims of the instant application were allowed, including Claims 83, 84, 86 and 87. Accordingly, Applicant respectfully requests that the Examiner declare an Interference between the present Application and the '489 Patent in view of the following comments.

Clarification of the status of Claim 87

In the Official Action of August 24, 2007, and during a telephone interview on October 17, 2007, the Examiner in charge of the present application, Mr. Manuel Mendez, requested clarification of the status of claim 87. The Examiner has pointed out that in the amendment of February 9, 2005, claims 82-87 were disclosed. However, in later amendments dated October 26, 2005 and May 17, 2006, only claims 82-86 were discussed as pending, and there is no record of claim 87 being cancelled. For these reasons clarification was requested.

The undersigned Attorney of Record has now reviewed the file and has determined that claims 82-87 were present in the amendment dated February 9, 2005. Indeed, this is the very amendment in which they were first introduced.

In response to the amendment, Examiner Mendez, who was newly assigned to the case because of the departure of Examiner Michael Thompson, issued a Notice of Non-Compliant Amendment and requested clarification as to how the new claims could overcome the references cited.

In response to the Notice of Non-Compliant Amendment, Applicants filed the amendment dated October 25, 2006. In that amendment, the undersigned Attorney of Record inadvertently failed to include claim 87. Applicants Attorney apologizes for any inconvenience this has caused the Examiner.

In response, the Examiner issued a restriction requirement between the species of Fig.1 (gas apparatus with no temperature sensor) and Figs. 4 & 5 (gas apparatus with temperature sensor). In the amendment dated February 16, 2006, even though Applicants traversed the restriction requirement, Applicants elected to prosecute the species of Fig. 4 & 5, and listed claims 83-86 as reading thereon. Had Applicants Attorney noticed the omission of claim 87 at the time, it would have also been listed with claims 83-86, as it has a temperature sensor.

Applicants believe that claim 87 is allowable, and should be in the interference proceedings, as Claim 87 was copied from Claim 30 of the U.S. Patent No. 6,976,489. Claim 87 deals with the same subject matter as claims 83-86. Since claims 83-86 were allowable over U.S. Patent No. 6,976,489, Applicants suggest that claim 87 is also allowable.